Supreme Court, U.S.
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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

MANSEL J. CARRIERE,
JANELL L. CARRIERE and
AETNA CASUALTY & SURETY COMPANY

Petitioners

versus

GREY WOLF DRILLING COMPANY and
PETROLEUM MARINE INS. AGENCY, INC.,

Respondents

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Fifth Circuit Court of Appeals erred in not recognizing the applicability of Texas law in accordance with Louisiana's conflict of laws, where the overwhelming majority of contacts and interests in the case are in Texas.

LIST OF ALL PARTIES TO THE PROCEEDING

Mansel J. Carriere and Janell L. Carriere, plaintiffs

Aetna Casualty & Surety Company, intervenor-plaintiff

Grey Wolf Drilling Company, defendant-respondent

Petroleum Marine Insurance Agency, Inc., as agent on behalf of certain underwriters of Lloyd's London, England, and certain insurance companies, defendant-respondent

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PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Mansel J. Carriere, Janell L. Carriere and Aetna Casualty & Surety

Company, the petitioners herein, pray for the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled case on December 9, 1994.

OPINIONS AND JUDGMENTS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit sought for review, unpublished, but printed in Appendix A of this Petition on pages A-1 through A-34, affirmed the district court's judgment granting summary judgment in favor of Grey Wolf Drilling Company and Petroleum Marine Insurance Agency, Inc. A timely Petition for Rehearing, printed in Appendix A on page A-72 was denied on January 17, 1995.

The judgment of the United States District Court for the Western District

of Louisiana, unpublished, but printed in Appendix A of this Petition on pages A-35 through A-37, entered on January 13, 1994, granted summary judgment for Grey Wolf Drilling Company and Petroleum Marine Insurance Agency, Inc.

JURISDICTION

Jurisdiction of the United States Supreme Court is invoked pursuant to 28 U.S.C. § 2101(c), as well as 28 U.S.C. § 1254. The judgment of the United States Court of Appeals for the Fifth Circuit was entered on December 9, 1994 and a timely Petition for Rehearing was denied on January 17, 1995.

STATUTES INVOLVED

La. Civil Code Article 14

La. Civil Code Article 3515

La. Civil Code Article 3542

La. Civil Code Article 3543

La. Civil Code Article 3544

La. Civil Code Article 3545

La. Civil Code Article 3546

La. Civil Code Article 3547

La. Civil Code Article 3548

La. Revised Statute 23:1032

La. Revised Statute 23:1101

La. Revised Statute 23:1102

1991 La. Acts No. 923 § 1

1991 La. Acts No. 923 § 4

STATEMENT OF THE CASE

Mansel J. Carriere and his wife, Janell L. Carriere, filed this tort action against Grey Wolf Drilling Company and its insurer, Petroleum Marine Insurance Agency, Inc., in the United States District Court for the Western District of Louisiana on June 17, 1992. The suit arose out of injuries Mansel Carriere sustained in Texas while working

for his employer, Chandeleur Energy Corporation, a Texas corporation.

Union Pacific Resources Company (UPRC), a Texas corporation, contracted with Grey Wolf Drilling Company, also a Texas corporation, to drill a well near Gonzales, Texas. Grey Wolf chose not to perform the work itself and entered into an agreement with Chandeleur Energy Corporation, also a Texas corporation, to undertake the drilling work at the Texas site. Thereafter, Grey Wolf's sole participation in the arrangement was to supply the equipment, *i.e. drilling rig and appurtences,* to the drilling site. Grey Wolf did not have any employees at the rig. Chandeleur paid and controlled its employees. Moreover, Grey Wolf did not exercise any control over Chandeleur's employees.

Mansel Carriere was hired in

Louisiana by Chandeleur to work at the drilling site in Texas. While in the course and scope of his employment, he was injured when the tongs he was using failed to "bite" the upper joint of the pipe. As a result, the tongs swung around the pipe when the driller engaged the cathead. Mr. Carriere had both hands on the tongs when they swung around the pipe, throwing him backwards injuring his neck and back, among other injuries, necessitating extensive back surgery.

Mr. Carriere has received workers' compensation benefits from his employer, Chandeleur, through Aetna Casualty & Surety Company, as a result of his injuries. Aetna Casualty & Surety Company intervened in the tort suit asserting its subrogation rights.

Mansel Carriere and Janell Carriere's third party tort action was

brought against Grey Wolf as owners of the allegedly defective tongs.

Grey Wolf Drilling Company and its insurer, Petroleum Marine Insurance Agency, Inc., filed a Motion for Summary Judgment claiming immunity from this tort suit based on the statutory employer doctrine found in Louisiana's workers' compensation laws. Because Mr. Carriere's accident occurred in Texas and his claim for the defective equipment is against a Texas corporation, plaintiffs and intervenor opposed the Motion for Summary Judgment urging the application of Texas' substantive tort law to this matter. Application of Texas' substantive tort law precludes the application of the Louisiana Statutory Employer Immunity Doctrine.

A hearing was held on the Motion for Summary Judgment before the Honorable

Judge Richard T. Haik, Sr. on December 16, 1993. The transcript of the proceeding before the Honorable Richard T. Haik, Sr. is included in Appendix A of this Petition on pages A-38 through A-71. The trial court granted the defendant's motion and judgment was entered on January 13, 1994.

REASONS FOR GRANTING THE WRIT

I. APPLICATION OF LOUISIANA'S WORKERS' COMPENSATION LAW (TORT IMMUNITY DOCTRINE) IS ERRONEOUS WHEN LOUISIANA CIVIL CODE ARTICLE 3544(2) SPECIFICALLY PROVIDES FOR THE APPLICATION OF TEXAS' TORT LAW.

A. TRUE CONFLICT OF LAW

Federal courts exercising diversity jurisdiction are to apply the conflicts of laws rules of the forum state. Klaxon Co. v. Stentor Elec. Mfg Co., Inc., 313 U.S. 487, 61 S.Ct. 1020, 85 L.Ed 1477 (1941). Thus, the lower courts are bound to apply the conflicts of laws principles of Louisiana since this matter was brought in the United Stated District Court for the Western District of Louisiana.

Jurisprudence in Louisiana provides that the court must first determine whether a "true conflict" exists warranting the application of the conflicts of laws principles. Sandefer

Oil & Gas v. AIG Oil Rig of Texas, Inc., 846 F.2d 319, 322 (5th Cir. 1988), rehearing denied (7/6/88); Farrell Construction Company v. Jefferson Parish, Louisiana, No. 86-4242, 1992 WL 210027 (E.D. La. August 20, 1992).

The Louisiana Supreme Court in Jagers vs. Royal Indemnity Company, 276 So.2d 309 (La. 1973), discussed the distinction between a "true conflict" and a "false conflict." The court concluded that Jagers involved a "false conflict" because both of the parties to the suit were residents of Louisiana, thus no real or true conflict existed because only a single state had an interest in the application of its law. The fact that the accident giving rise to the suit occurred in Mississippi did not give Mississippi the "interest" needed to warrant the application of its law to the

action.

To have a "true conflict", two or more states must have an interest in the application of its law to the suit. The facts of the present case meet this requirement. The plaintiffs are residents of Louisiana, thus Louisiana has an interest in compensating its residents for injuries. The alleged tortfeasor is a Texas corporation domiciled in Texas, thus Texas has an interest in applying its laws to protect its resident corporations. Consequently, this court is faced with a "true conflict" and must apply the conflicts of laws principles of Louisiana pursuant to Klaxon.

While Louisiana and Texas both have an interest in applying its law in this matter, Texas has the greater interest. The injury occurred in Texas as a result

of negligent conduct of a Texas corporation. Such conduct warrants the application of Texas law to prevent tortfeasors from acting negligently, thereby injuring innocent parties. Whether the plaintiffs are residents of Texas or another state, Texas has an interest in protecting innocent parties in their state from injury by a Texas tortfeasor. Furthermore, Louisiana has an interest in seeing that its residents are compensated, thereby mandating the application of Texas law, which allows a tort action against the defendant, Grey Wolf. The lower courts have held that Louisiana workers' compensation law should be applied to this tort action against Grey Wolf, which actually precludes the Carrieres from maintaining this tort action against Grey Wolf.

For the reasons discussed below the

Carrieres and Aetna disagree with the lower courts application of Louisiana workers' compensation law in this tort suit against Grey Wolf.

B. CONFLICT REQUIRES APPLICATION OF ARTICLE 3544(2).

A recent act of the Louisiana legislature, 1991 La. Acts No. 923 § 1, revised, amended and re-enacted the conflict of laws rules of Louisiana. Louisiana Civil Code Article 14 now states that "[u]nless otherwise expressly provided by the law of this state, cases having contacts with other states are governed by the law selected in accordance with the provisions of Book IV of this Code." Section four of La. Acts No. 923 provides that "[t]his Act shall become effective on January 1, 1992, and shall apply to all actions filed after that date." This Act and the articles

included in the newly-created Book IV of the Louisiana Civil Code apply to this present action since it was filed by plaintiffs on June 17, 1992, subsequent to the January 1, 1992 effective date. Articles 3542-3548 of Book IV of the Louisiana Civil Code specifically applies to delictual and quasi-delictual obligations. As a general rule, issues of delictual or quasi-delictual obligations are governed by the law of the state whose policies would be most seriously impaired if its law were not applied to those issues. La. Civ. Code Art. 3542. Succeeding Articles 3543-3546 are more specific and prevail over the general rule of Article 3542.

In particular, Louisiana Civil Code Article 3544 addresses the issue of loss distribution and financial protection as between an injured person and the

tortfeasor. Rules that provide immunity from suit are "rules of loss distribution and financial protection." Comment (a) to La. Civ. Code Art. 3542. Consequently, the issue as to whether or not Grey Wolf is immune from tort liability is controlled by the articles relating to loss distribution and financial protection.

Article 3544 states in pertinent part that:

> "Issues pertaining to loss distribution and financial protection are governed, as between a person injured by an offense or quasi-offense and the person who caused the injury, by the law designated in the following order:
>
> ...
>
> (2) If, at the time of the injury, the injured person and the person who

> caused the injury were domiciled in different states: (a) when both the injury and the conduct that caused it occurred in one of those states, by the law of that state..."

Mansel Carriere is domiciled in Louisiana and Grey Wolf is domiciled in Texas. Subsection (2) of Article 3544 is the applicable provision since Carriere and Grey Wolf were domiciled in different states at the time of Carriere's injury. Article 3544(2)(a) provides that when the injury and tortfeasor's conduct that caused the injury occurred in one of the states of domicile, then the law of that state governs, *i.e. law of Texas*.

C. JURISPRUDENCE INTERPRETING ARTICLE 3544

Very little case law exists on the interpretation of the recently enacted conflicts of laws provisions found in

Book IV, especially Article 3544. Two of Louisiana's courts of appeal have recently issued opinions discussing article 3544. The first opinion, Levy v. Jackson, 612 So.2d 894 (La. App. 4th Cir. 1993), applied Louisiana Civil Code Article 3544 to a conflict of law issue where the facts consisted of an accident occurring in Louisiana, but the parties were all residents of Alabama. Article 3544(1) provides that if, at the time of the injury, the injured person and the person who caused the injury were domiciled in the same state then the law of that state governs the issue of loss distribution and financial protection. Although the lawsuit by the Alabama plaintiff was against several parties, some of which were residents of Louisiana, the particular issue before the court was a motion for summary

judgment filed by the insurer of one of the drivers, who was a resident of Alabama. The Fourth Circuit specifically held "[a]fter consideration of the application, this court held that Alabama law was applicable to the resolution of the dispute between those litigants who were residents and domiciles of Alabama." Rehearing was requested and granted with the Fourth Circuit adhering to its original opinion that Alabama law was applicable. The Fourth Circuit did not hold that Alabama law governed the entire action, but that Alabama law governed the dispute between the litigants who were residents and domiciles of Alabama.

The second Louisiana opinion discussing article 3544 is Kennington vs. H. Blume Johnson, Inc., 632 So.2d. 883, No. 25,580-CA, (La. App. 2d Cir., 2/23/94). In Kennington, like the

present matter, a Louisiana worker brought an action against the owner of a Texas drilling rig to recover damages for injuries sustained while working on the rig in Texas. The difference between Kennington and the present matter is that the defendant in Kennington was a Louisiana corporation and the defendant in the present matter is a Texas corporation. The Court of Appeal for the Second Circuit correctly held that Louisiana law governed and not Texas law. In reaching its holding, the court applied article 3544(1) which provides that the law of Louisiana governs the issue of loss distribution and financial protection where the injured person and the person causing the injury were both

domiciled in the State of Louisiana.[1]

Although the second circuit relied on Article 3544, the facts of the case mandated that subsection (1) apply because both of the parties were

---

[1]The Louisiana Supreme Court granted writs in this matter, Kennington v. H. Blume Johnson, Inc., No. 94-C-0744, (La. July 1, 1994), 638 So.2d 1066, which was reversed and remanded for an issue other than the conflict of law issue. The question before the Louisiana Supreme Court was whether the trial court and the court of appeal properly concluded that the defendant is the statutory employer of the plaintiff, and therefore immune from tort liability. Kennington was injured while working at a Texas well site. Kennington's employer, Bo-Gray Casing Company was domiciled in Louisiana, but maintained offices in both Texas and Louisiana. Bo-Gray orally contracted with the defendant, also a Louisiana corporation, to provide casing services to a drilling rig in Texas. Kennington filed suit against H. Blume Johnson, Inc., which moved for summary judgment raising the statutory employer defense pursuant to Louisiana R.S. 23:1032 and 1061. After determining that Louisiana law applied pursuant to Louisiana Civil Code Article 3544(1), the court granted summary judgment finding that defendant was the statutory employer.

domiciliaries of the same state, Louisiana. In the present action, subsection (2) rather than (1) applies because both parties are not domiciled in the same state. Grey Wolf is domiciled in Texas, where the injury occurred, and plaintiffs' are residents of Louisiana. This factual situation is controlled by Article 3544(2) mandating the application of Texas tort law since Grey Wolf was domiciled in Texas and its alleged conduct that caused the accident occurred in Texas.

D. LOUISIANA'S "INTEREST ANALYSIS" APPROACH ALSO FAVORS TEXAS LAW

Prior to the enactment of Book IV of the Louisiana Civil Code, the Louisiana Supreme Court developed an "interest analysis" test to determine the applicable substantive law in conflict of law matters. Jagers vs. Royal Indemnity Company, 276 So.2d. 309 (La. 1973). The articles contained in Book IV codify the "interest analysis" approach developed and used by the Louisiana Supreme Court. Both the Second Circuit and Fourth Circuit Court of Appeals in Louisiana discussed the "interest analysis" approach in Kennington and Levy, respectively. Both courts concluded that the same result was obtained whether they applied article 3544(2) or used the "interest analysis" approach.

In Jagers, a mother sued her major

son for personal injuries sustained in an automobile accident occurring in Mississippi. Both the mother and son were domiciled in Louisiana. Mississippi law prohibited the mother from suing her child, while Louisiana law allows such an action. The Supreme Court applied Louisiana law to the action because both parties were domiciled in Louisiana; thus, Louisiana had an interest in applying its law and Mississippi had none.

In Kennington, both parties were also domiciled in Louisiana; thus, Louisiana had an interest in applying its law and Texas had none.

The parties were both domiciled in Alabama, the policy of insurance was issued in Alabama in Levy, and the only contact with Louisiana was that the automobile accident occurred in

Louisiana; thus, Alabama had a greater interest in applying its law than Louisiana.

However, in the present case, only one party is domiciled in Louisiana, the Carrieres. The tortfeasor, Grey Wolf, is domiciled in Texas and the accident occurred in Texas. In addition, the contract between Grey Wolf and UPRC was perfected in Texas as well as the agreement between Grey Wolf and Chandeleur, which expressly provides for Texas law; thus, Texas has the greater interest in this action and its law should govern.

Subjecting a defendant tortfeasor to the law of a state where they have no interest is unjust, as was determined by the courts in both Jagers and Kennington. Such injustice will result if the lower decisions are affirmed. An affirmation

of the lower court's decision will allow Louisiana workers' compensation law to be applied to a Texas defendant in a Texas tort action for injuries sustained in Texas.

Grey Wolf is a Texas corporation domiciled in Houston, Texas. It provided defective equipment to a drilling site in Texas. Louisiana does not have an interest in protecting Grey Wolf from accidents that occur in Texas. In consideration of the "interest analysis" approach formerly used in Louisiana, this court is asked to reverse the lower court rulings finding that Texas has the interest in this litigation rather than Louisiana.

E. FIFTH CIRCUIT'S DECISION

The Fifth Circuit agreed that statutory employer immunity provisions involve issues of financial protection

and loss distribution and that Article 3544 of the Louisiana Civil Code is the appropriate conflict provision for determining the choice of law analysis. The Fifth Circuit, however, does not agree that "the choice of law analysis ends with the definitive result mandated by Article 3544(2)." The Fifth Circuit further finds that this particular dispute presents an exceptional situation allowing it to go one step beyond Code Article 3544 and apply Louisiana law "to the dispute despite the fact that Article 3544(2) mandates that Texas law applies."

The Fifth Circuit conducted its own separate interest analysis concluding that Louisiana law would be most seriously impaired if Texas law were applied to the dispute. In support of its action, the Fifth Circuit relies on Louisiana Civil Code Article 3547, which

provides the following:

> "The law applicable under Articles 3543-3546 shall not apply if, from the totality of the circumstances of an exceptional case, it is clearly evident under the principles of Article 3542, that the policies of another state would be more seriously impaired if its law were not applied to the particular issue. In such event, the law of the other state shall apply."

In the comment that follows Civil Code Article 3547, the commentator states that:

> "...the choice-of-law rules contained in Articles 3543-3546 were drawn from the general principles enunciated in Article 3542. By designating in advance the applicable law, these rules will enable the courts to avoid the laborious analysis required by Article 3542, and thus will alleviate their choice-of-law burden while providing the desired measure of predictability....as with any a priori choice-of-law rules, the rules contained in Articles 3543-3546 may, in exceptional cases, produce a result that is incompatible with the principles of Article

> 3542 from which these rules have been derived. In order to avoid such a result, this Article provides an "escape mechanism"....This mechanism should be reserved for the truly exceptional cases, and the burden of persuasion for its utilization should be placed on the party who invokes it."

The Fifth Circuit, apparently relying on the commentary to Code Article 3547, is "convinced that Louisiana law would be most seriously impaired if Texas law were applied to the dispute, thereby concluding that Texas law must yield to Louisiana law." In concluding that the present matter is an exceptional case, the Fifth Circuit also considered Article 3542 and the totality of the circumstances. Article 3542 provides that issues of delictual or quasi-delictual obligations are governed by the law of the state whose policies would be most seriously impaired if its laws were

not applied to the issue in dispute. That state is determined by evaluating the strength and pertinence of the states' policies in light of the pertinent contacts of each state to the parties and the events giving rise to the dispute, including the place of conduct and injury; the domicile or place of business of the parties; the state in which the relationship was centered; and the policies of Article 3515; as well as the policies of deterring wrongful conduct and of repairing the consequences of injurious acts. La. Civ. Code art. 3542.

In comparing the policies and interests of both Texas and Louisiana, the Fifth Circuit found the Texas interest to be as follows: (1) Grey Wolf is incorporated in Texas; (2) The place of conduct and injury are in Texas; and

(3) Texas has an interest in deterring wrongful conduct and repairing the consequences of injurious acts. The court found Louisiana's interest to be stronger by comparison which are: (1) Carriere is domiciled in Louisiana; (2) Grey Wolf is qualified to do business in Louisiana, and is doing business in Louisiana; (3) Carriere was working for Grey Wolf pursuant to a Louisiana contract for hire; (4) Carriere's direct employer with whom Grey Wolf established the contractual relationship to "hire" Carriere is domiciled in Louisiana; (5) Carriere has received workers' compensation benefits for his injury pursuant to Louisiana law; (6) Louisiana has an interest in protecting both citizens who are recruited and hired in Louisiana and employers that are doing business in the State; (7) Louisiana has

an interest in protecting foreign corporations in order to create a friendly business atmosphere in which to promote commerce and industry; (8) Louisiana has an interest in the consistent and comprehensive implementation of its workers' compensation laws; and (9) As articulated by Article 3515 the policies and needs of the interstate system, which includes the expectation of the parties and the minimization of adverse consequences that might follow from subjecting a party to the law of more than one state are best served in this dispute by the application of Louisiana law.

Mansel and Janell Carriere and Aetna disagree with the court's conclusions, in particular with the court's decision to go beyond the application of Code Article 3544 and the determination that Louisiana

rather than Texas law applies. The court's conclusions are not only contrary to 3544, but contrary to Levy and Kennington. In addition, in trying to give full faith and credit to the policies of Louisiana, the court has overridden the substantial interest of the State of Texas, which is forbidden by Thomas v. Washington Gas Light Company, 448 U.S. 261, 100 S.Ct. 2647, 65 L.Ed. 2d 757 (1980). The United States Supreme Court held that it is for each state to formulate its own policy whether to grant supplemental awards according to its preception of its own interests. The United States Supreme Court further concluded that the substantial interest of a second state should not be overridden by another state through unneccessarily aggressive application of the full faith and credit clause.

Thomas, 100 S.Ct. at 2663.

In Thomas, the plaintiff was domiciled and hired in the District of Columbia, but injured in the State of Virginia, factually similar to the instant matter. Thomas could recover workers' compensation under either the law of Virginia or the law of the District of Columbia. Thomas received benefits under the Virginia Workmens' Compensation Act for his injuries and subsequent to that received a supplemental award under the law of the District of Columbia. The respondent argued, like Grey Wolf, that Virginia's exclusivity provisions precluded any recovery under any other state's laws. The court held that a state has no legitimate interest withing the context of our federal system in preventing another state from granting a

supplemental compensation award when that second state would have had the power to apply its workmen's compensation law in the first instant. Thomas, 100 S.Ct. at 2663. Likewise, this court cannot preclude Carriere from seeking the benefits he is entitled to under the substantive tort law of Texas, especially since Texas had the power to apply its law in the first instance.

Even though Thomas involved the issue of whether the plaintiff could recover under the workers' compensation laws of two states, and our case involves the workers' compensation laws of one state and the tort laws of another, the same rationale applies for allowing the recovery under both states' laws whether it be under the workers' compensation statutes or the tort statutes. When the laws of different states apply, one state

cannot assert exclusivity provisions extraterritorially thereby precluding the parties from asserting their rights and remedies under the law of the second state.

Moreover, the interest analysis conducted by the Fifth Circuit included several factual errors and the omission of other pertinant facts. The factual errors and omissions are crucial since the court based its decision on the totality of the circumstances finding that Louisiana has a greater interest than Texas.

The court's decision not to apply Texas law precludes plaintiffs from exercising rights they are clearly entitled to under both Louisiana and Texas law. In weighing the interest of Louisiana and Texas, the Fifth Circuit incorrectly considered two interests of

Louisiana that should have been Texas interests. First, the Fifth Circuit states in Louisiana interest (3) that "Carriere was working for Grey Wolf pursuant to a Louisiana contract for hire". Carriere was actually working for Chandeleur, not Grey Wolf, pursuant to a Louisiana contract for hire. At the time of the accident, Carriere was working in Texas pursuant to a Texas contract between Chandeleur and Grey Wolf. Second, Louisiana interest (4) states that "Carriere's direct employer, with whom Grey Wolf established the contractual relationship to hire Carriere is domiciled in Louisiana." Carriere's direct employer, Chandeleur, is a Texas corporation, not a Louisiana corporation.

In its reasons for denying petitioners' application for rehearing, the Fifth Circuit addressed the two

misstatements. The court believes the Carrieres are misreading interest (3) and states that the essential point of the statement is the fact that Carriere was working pursuant to a Louisiana contract for hire. Carriere does not dispute that he was working pursuant to a Louisiana contract for hire, but that contract was with his employer, Chandeleur, and not the defendant, Grey Wolf, and has no bearing on the tort suit brought against Grey Wolf. In regards to the fourth Louisiana interest, the court admits that it misspoke in stating that Carriere's direct employer was domiciled in Louisiana. The court further states that the statement should reflect that Chandeleur is authorized to do business in Louisiana and in fact is doing business in Louisiana. The court's amended statement is correct, however, again the fact that Chandeleur is doing business in Louisiana has no bearing

on Mr. Carriere's lawsuit against Grey Wolf, a Texas corporation doing business in Texas.

The court in conducting its analysis chose to consider as many Louisiana interests as possible while failing to consider all pertinant facts and interests of Texas. While the court's considered more Louisiana interests than Texas interests in its analysis, the Louisiana interests considered by the court have no bearing on the tort suit against Grey Wolf, such as the fact that Carriere was working for Chandeleur pursuant to a Louisiana contract for hire, that Chandeleur was authorized to do business in Louisiana, and that Carriere received workers compensation benefits pursuant to Louisiana law.

While the court correctly stated as a Louisiana interest that Carriere is

domiciled in Louisiana, it failed to consider that Carriere was working in Texas at the time of the accident and injury. And while the Fifth Circuit listed as a Louisiana interest that Louisiana has an interest in protecting both citizens that are recruited and hired in Louisiana and employers that are doing business in this state, it failed to consider that Texas has this interest as well. Texas not only has an interest in protecting innocent victims injured in its state, it has a substanial interest in regulating the conduct of Texas corporations operating and causing injury in its state and an interest in repairing the consequences of any injurious acts occurring in Texas. Louisiana does not have an interest in protecting Grey Wolf from accidents that occur in Texas. The interest in compensating a plaintiff is

not served by application of Louisiana law. The Texas interest in forcing Grey Wolf to be safe is served by the application of Texas law.

The court failed to consider pertinent information, contacts and interest of Texas in conducting its analysis. The most important factors in any analysis is the place of the injury - Texas - and the domicile of the parties involved - the employer and the tortfeasor are both domiciled in Texas, while only the plaintiff is domiciled in Louisiana. Furthermore, the employer and the tortfeasor expressly provided for Texas law to apply, yet the court insists on applying Louisiana law. And last, but not least, Louisiana Civil Code Article 3544(2) expressly provides for the application of Texas law under the facts. The court has recognized the application

of article 3544, yet it chose to consider a narrow list of Texas factors and weigh them against an inflated list of Louisiana factors to reach the result that Louisiana law applies.

The Fifth Circuit states in its opinion that "by running Appellants claims simplistically through a Civil Code Article 3544(2) checklist,... [they] would be guilty of failing to consider the effect that such a ruling would have on Louisiana workers' compensation law."

The Carrieres contend that the lower courts would not be guilty of anything by applying Civil Code Article 3544(2) to this dispute because article 3544 is directly on point and resolves this dispute without the need to conduct an independent analysis. The Louisiana courts that have considered similiar matters have utilizied article 3544

without feeling the need to go a step beyond the statute. Furthermore, the legislature has designated the law to be applied allowing the courts to avoid conducting their own analysis.

The Fifth Circuit further stated that its holding "is a particularized response to an exceptional case; a response that avoids the piecemeal application of different laws to an equally piecemeal attempt to obtain double - or at least overlapping - recovery for the same injury." Petitioners submit that the application of Texas law to this matter does not result in the "piecemeal application of different laws" as this matter is against one defendant and its insurer and once Texas law is applied to the matter, the choice of law issue is resolved. Furthermore, the Louisiana conflict of

law provisions are fashioned in such a way to allow the application of different laws to different issues.

Petitioners find it interesting that the courts have applied Louisiana law in an attempt to avoid piecemeal application of the laws of different states; however, Grey Wolf in its contract with Chandeleur expressly provided for Texas law to govern while their defense in this lawsuit has been that Louisiana law applies, granting them tort immunity. The lower courts' decisions in fact actually provide for the application of the laws of different states as Texas law governs Grey Wolf's actions, but Louisiana law immunizes them from tort liability resulting from their actions in Texas.

Additionally, any monies recovered by the Carrieres in its tort action

against Grey Wolf will not result in double recovery, nor will it result in overlapping recovery. This is because Grey Wolf will be entitled to an offset for any amounts previously paid by them and Mr. Carriere's employer, Chandeleur, and Aetna will be reimbursed by the tortfeasor for any amounts paid on behalf of Mr. Carriere. Grey Wolf has led the lower courts to believe that Mr. Carriere is a bad person for suing Grey Wolf and is attempting to recover twice for his injuries, once in Louisiana and once in Texas. That is not the case. As explained above, Mr. Carriere will not receive double recovery. Moreover, the workers' compensation laws of both Texas and Louisisana expressly allow injured employees and/or employers to pursue third party tort actions against the third party tortfeasor. La. R.S.

23:1101, 1102.[2]

The Fifth Circuit stated in its conclusion that "we are convinced that a Louisiana court, pursuant to Louisiana Civil Code Article 3547, would apply

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[2]Notwithstanding the fact that Mr. Carriere has received workers' compensation benefits under Louisiana law, he can still proceed against Grey Wolf under Texas tort law. This is because the Louisiana compensation laws apply to the rights and remedies as between Mr. Carriere and his employer, Chandeleur. However, the law that governs the rights and remedies as between Mansel and third parties, Grey Wolf, is tort law. The claims between Mr. Carriere and Chandeleur are controlled by the Louisiana workers' compensation statutes. This was stipulated to by counsel for Mr. Carriere and counsel for Chandeleur. Such stipulation governs the claims between Mansel and his employer and does not control the claims between Mr. Carriere and other parties, such as Grey Wolf. The workers' compensation provisions in Louisiana provide that workers' compensation is the exclusive remedy for an employee against his employer. La.R.S. 23:1032. However, this exclusive remedy does not prevent the employee from maintaining tort actions against third party tortfeasors. La.R.S. 23:1101. This is the law in Texas as well.

Louisiana substantive law to Carriere's dispute against his statutory employer, Grey Wolf." Petitioners have a hard time believing that a Louisiana court would have reached the result that the district court and Fifth Circuit reached in this matter. Both of the Louisiana courts that have considered similar issues applied article 3544 period. The court in Kennington, considered facts very similar to the facts of our dispute and applied the law as mandated by article 3544, which the lower courts should have done in this matter.

CONCLUSION

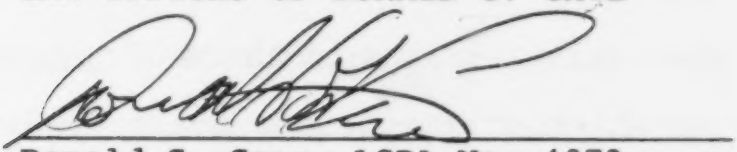
Petitioners submit that the issue before the court is a conflict of law issue, the resolution of which can be found by utilizing Louisiana Civil Code article 3544, the specific code article of Louisiana's Civil Code that deals with

issues of loss distribution and financial protection. The facts of this case are factually similar to those of Kennington, in which the Louisiana court applied the code article to resolve the issue. The lower courts' should have followed the decision of the Louisiana courts in Kennington in resolving the dispute in this matter, which would have resulted in the application of Texas law.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted:

LAW OFFICES OF DONALD G. CAVE



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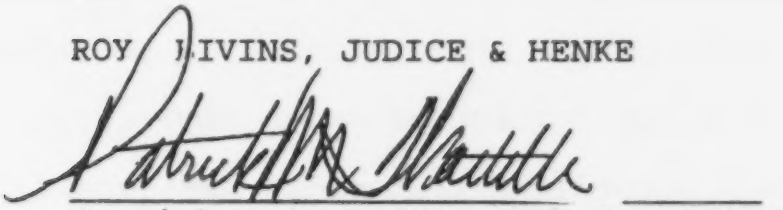

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April 14, 1995

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all counsel of record by placing a copy of same in the United States mails, postage prepaid and properly addressed to:

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Baton Rouge, Louisiana, this 14th day of April, 1995.

Donald G. Cave